

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
EASTERN DIVISION

U.S. DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA

DANA SMITH and SANDRA SMITH,

Plaintiffs,

vs.

FLEETWOOD HOMES OF
GEORGIA, INC., et al.,

Defendants.

CV-00-PT-2871-E

ENTERED

DEC 22 2000

MEMORANDUM OPINION

This cause comes to be heard upon defendant Fleetwood Homes of Georgia, Inc.'s ("Fleetwood") Motion to Dismiss, filed on November 7, 2000 and defendant Conseco Financial Corp. Alabama's ("Conseco") Motion to Compel Arbitration and Stay Discovery, also filed on November 7, 2000.

FACTS

In order to conserve space and time, this court incorporates by reference its statement of the facts in another Memorandum Opinion in this case written in with regard to defendant Ronnie Smith's Homes' Motion to Compel Arbitration.

ARGUMENT

Fleetwood argues that this action should be dismissed pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure because the plaintiffs have "failed to plead or otherwise establish that the amount in controversy under their Magnuson-Moss Act claim exceeds \$50,000 (exclusive of interests and costs). The plaintiffs respond by arguing that they have made bona

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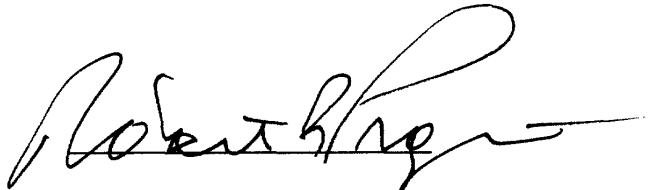
fide allegations that demonstrate that the amount in controversy exceeds \$50,000 because the purchase price of their home was \$71,349. They further argue that they specifically alleged in paragraph six of their complaint that “[t]he amount at issue in this action, exclusive of interests and costs, exceeds \$50,000.” The plaintiffs contend that, because the defendant has “failed wholly to present any evidence that the [Magnuson-Moss Act] claim does not exceed \$50,000,” the motion to dismiss should be denied.

Next, defendant Conseco argues that this court should compel the plaintiffs to submit to arbitration. It claims that the plaintiffs are parties to a valid arbitration agreement that was part of a transaction that affected interstate commerce. Conseco further argues that the agreement does not conflict with the plaintiffs’ claims under the Magnuson-Moss Act. Conseco also requests that this court stay all discovery in this case pending the arbitration proceedings. The plaintiff has not replied to Conseco’s motion.

CONCLUSION

The motion of Conseco will be granted subject to the same conditions of the said Memorandum Opinion with reference to Ronnie Smith’s Homes’s Motion to Compel Arbitration.

This 21st day of December 2000 -

A handwritten signature in black ink, appearing to read "Robert B. Propst", with a long horizontal flourish extending to the right.

ROBERT B. PROPST

SENIOR UNITED STATES DISTRICT JUDGE